

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JERSEY MIKE’S FRANCHISE SYSTEMS,
INC.,

Plaintiff,

Case No.: 23-CV-03444-GC-TJB

v.

AMERICAN ARBITRATION
ASSOCIATION, INC., OPHELIA
AUGUSTINE, and CECELIA LAHR,

Defendants.

DECLARATION OF SETH M. SHAPIRO, ESQ.

1. I, Seth M. Shapiro, Esq., am an associate with Zarco Einhorn Salkowski, P.A., counsel for Plaintiff Jersey Mike’s Franchise Systems, Inc. (“Plaintiff”) in this action, and am duly admitted and in good standing to practice law in the States of New York and Florida.

2. I submit this Declaration in support of and contemporaneously with Plaintiff’s Motion to Assess Costs for Failure to Waive Service of Process (the “Motion”).

3. I have personal knowledge of the facts set forth herein, and if called as a witness, I would testify thereto.

4. On June 26, 2023, Plaintiff commenced the instant action.

5. On June 29, 2023, Plaintiff sent Defendants a Notice of Lawsuit and Request for Waiver of Service of Process pursuant to Rule 4(d). Defendants acknowledged receipt thereof on June 29, 2023 via e-mail, a true and correct copy of which is attached hereto as **Exhibit A** at 6–7.

6. On July 12, 2023, Defendants refused to waive service. *See* **Exhibit A** at 1–3.

7. Accordingly, Plaintiff was required to engage a process server to personally serve Defendants with process. Following execution of personal service of process on Defendants, Plaintiff filed the Affidavit of Service with the Court. *See* ECF Nos. 5–6.

8. Due to Defendants’ failure to agree to waive service, Plaintiff unnecessarily incurred the costs for effecting formal service upon Defendants and preparing this motion.

9. The total costs incurred for effecting formal service upon the two Defendants are one hundred eighty dollars (\$180.00). A true and correct copy of the Service of Process Invoice is attached hereto as **Exhibit B**.

10. Plaintiff has incurred a total of \$1,793.00 in reasonable attorney’s fees based on the hours and rates of the timekeepers specified below:

a. Seth M. Shapiro, Esq., Senior Attorney, a licensed attorney since March 2015: \$600.00 per hour for 2.14 hours, totaling \$1,284.00;

b. Anité Coro, Senior Paralegal, a paralegal since 2018 and a Florida Registered Paralegal since 2023: \$175.00 per hour for 2 hours, totaling \$350.00; and

c. Robert M. Einhorn, Esq., Managing Partner, a licensed attorney since 1990: \$795 per hour for 0.2 hours, totaling \$159.00.

A copy of the detailed description of the tasks completed by the professionals listed above is included in a detailed time submittal report attached hereto as **Exhibit C**.

11. I attempted to meet and confer with counsel for Defendants via e-mail on multiple occasions (including on June 29, 2023 and July 12, 2023) regarding the relief sought in the Motion. Counsel for Defendants responded to the undersigned’s attempt to resolve or narrow the issue with a “Shrug” emoji. *See* **Exhibit A** at 2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 15, 2023
Miami, Florida

s/ Seth M. Shapiro
Seth M. Shapiro, Esq.

EXHIBIT A

Anite Coro

From: Seth M. Shapiro
Sent: Wednesday, August 9, 2023 3:11 PM
To: Anite Coro
Subject: Fw: Jersey Mike's v. AAA: Waiver of Service

SETH M. SHAPIRO
Senior Attorney



ZARCO EINHORN SALKOWSKI, P.A.
One Biscayne Tower
2 S. Biscayne Blvd 34th Floor
Miami, FL 33131
Office: 305.374.5418 ext. 315
Fax: 305.374.5428
Email: sshapiro@zarcolaw.com
Website: www.zarcolaw.com

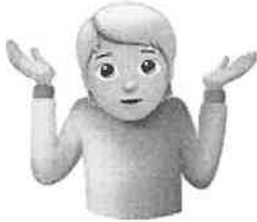


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From: Daniel Shay <danielshay@sandiegobankruptcynow.com>
Sent: Wednesday, July 12, 2023 4:15 PM
To: Seth M. Shapiro <sshapiro@zarcolaw.com>; Joshua Swigart <josh@swigartlawgroup.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>; Ingrid Morfi <IMorfi@zarcolaw.com>; Adin Feliz <afeliz@zarcolaw.com>; Michael DiCicco <mdicicco@maggslawnj.com>; Jane Campagnoli <jcampagnoli@maggslawnj.com>; Noah Larsh <noah@swigartlawgroup.com>; Spencer Pfeiff <spencer@swigartlawgroup.com>
Subject: RE: Jersey Mike's v. AAA: Waiver of Service



Daniel G. Shay
Law Office of Daniel G. Shay
2221 Camino Del Rio South, Ste 308
San Diego, CA 92108
Phone: 619-222-7429
Fax: 866-431-3292

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From: Seth M. Shapiro <sshapiro@zarcolaw.com>
Sent: Wednesday, July 12, 2023 1:14 PM
To: Daniel Shay <danielshay@sandiegobankruptcynow.com>; Joshua Swigart <josh@swigartlawgroup.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>; Ingrid Morfi <IMorfi@zarcolaw.com>; Adin Feliz <afeliz@zarcolaw.com>; Michael DiCicco <mdicicco@maggslawnj.com>; Jane Campagnoli <jcampagnoli@maggslawnj.com>; Noah Larsh <noah@swigartlawgroup.com>; Spencer Pfeiff <spencer@swigartlawgroup.com>
Subject: RE: Jersey Mike's v. AAA: Waiver of Service

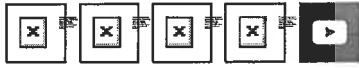
As stated in our below email on June 29, 2023, failure to waive service upon request would render your clients liable for paying our expenses and fees related to service of process pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure.

SETH M. SHAPIRO
Senior Attorney



Zarco Einhorn Salkowski, P.A.

One Biscayne Tower
2 S. Biscayne Blvd 34th Floor
Miami, FL 33131
Office: 305.374.5418 ext. 315
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Email: sshapiro@zarcolaw.com
Website: www.zarcolaw.com



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From: Daniel Shay <danielshay@sandiegobankruptcynow.com>
Sent: Wednesday, July 12, 2023 4:10 PM
To: Seth M. Shapiro <sshapiro@zarcolaw.com>; Joshua Swigart <josh@swigartlawgroup.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>; Ingrid Morfi <IMorfi@zarcolaw.com>; Adin Feliz <afeliz@zarcolaw.com>; Michael DiCicco <mdicicco@maggslawnj.com>; Jane Campagnoli <jcampagnoli@maggslawnj.com>; Noah Larsh <noah@swigartlawgroup.com>; Spencer Pfeiff <spencer@swigartlawgroup.com>
Subject: RE: Jersey Mike's v. AAA: Waiver of Service

Why would we agree to waive service ?

Daniel G. Shay
Law Office of Daniel G. Shay
2221 Camino Del Rio South, Ste 308
San Diego, CA 92108
Phone: 619-222-7429
Fax: 866-431-3292

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From: Seth M. Shapiro <sshapiro@zarcolaw.com>
Sent: Wednesday, July 12, 2023 9:09 AM
To: Joshua Swigart <josh@swigartlawgroup.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>; Ingrid Morfi <IMorfi@zarcolaw.com>; Adin Feliz <afeliz@zarcolaw.com>; Michael DiCicco <mdicicco@maggslawnj.com>; Jane Campagnoli <jcampagnoli@maggslawnj.com>; Noah Larsh <noah@swigartlawgroup.com>; Spencer Pfeiff <spencer@swigartlawgroup.com>; Daniel Shay <danielshay@sandiegobankruptcynow.com>
Subject: RE: Jersey Mike's v. AAA: Waiver of Service

Josh,

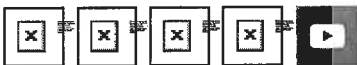
We are following up on our June 29th email below requesting waiver of service. Given how quickly you were able to respond to our request to agree to a stay of the arbitrations, we trust that you can respond to our request to waiver service this week.

Regards,
Seth

SETH M. SHAPIRO
Senior Attorney



Zarco Einhorn Salkowski, P.A.
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2 S. Biscayne Blvd 34th Floor
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From: Joshua Swigart <josh@swigartlawgroup.com>
Sent: Monday, July 10, 2023 11:24 AM
To: Seth M. Shapiro <sshapiro@zarcolaw.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>; Ingrid Morfi <IMorfi@zarcolaw.com>; Adin Feliz <afeliz@zarcolaw.com>; Michael DiCicco <mdicicco@maggslawnj.com>; Jane Campagnoli <jcampagnoli@maggslawnj.com>; Noah Larsh <noah@swigartlawgroup.com>; Spencer Pfeiff <spencer@swigartlawgroup.com>; Daniel Shay <danielshay@sandiegobankruptcynow.com>
Subject: Re: Jersey Mike's v. AAA: Waiver of Service

Respectfully, we view your federal filing as frivolous.
Your client contracted with our clients and provided for AAA to administer any disputes.
Those are the terms our clients are following, along with AAA.

Joshua B. Swigart

From: Seth M. Shapiro <sshapiro@zarcolaw.com>
Date: Monday, July 10, 2023 at 5:12 PM
To: Joshua Swigart <josh@swigartlawgroup.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>, Ingrid Morfi <IMorfi@zarcolaw.com>, Adin Feliz <afeliz@zarcolaw.com>, Michael DiCicco <mdicicco@maggslawnj.com>, Jane Campagnoli <jcampagnoli@maggslawnj.com>, Noah Larsh <noah@swigartlawgroup.com>, Spencer Pfeiff <spencer@swigartlawgroup.com>, Daniel Shay <danielshay@sandiegobankruptcynow.com>
Subject: Re: Jersey Mike's v. AAA: Waiver of Service

Josh,

AAA has refused to stay the arbitrations that your firm filed against Jersey Mike's without your clients' consent. We will seek emergency and additional relief from the court, to the fullest extent allowed by law, against each of your clients who does not give AAA consent **by tomorrow** to immediately stay their respective arbitration.

Regards,
Seth

SETH M. SHAPIRO
Senior Attorney



ZARCO EINHORN SALKOWSKI, P.A.
One Biscayne Tower
2 S. Biscayne Blvd 34th Floor
Miami, FL 33131
Office: 305.374.5418 ext. 315
Fax: 305.374.5428
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From: Joshua Swigart <josh@swigartlawgroup.com>
Sent: Thursday, June 29, 2023 3:57 AM
To: Seth M. Shapiro <sshapiro@zarcolaw.com>; Noah Larsh <noah@swigartlawgroup.com>; Spencer Pfeiff <spencer@swigartlawgroup.com>; Daniel Shay <danielshay@sandiegobankruptcynow.com>
Cc: Robert Einhorn <REinhorn@zarcolaw.com>; Ingrid Morfi <IMorfi@zarcolaw.com>; Adin Feliz <afeliz@zarcolaw.com>; Michael DiCicco <mdicicco@maggslawnj.com>; Jane Campagnoli <jcampagnoli@maggslawnj.com>
Subject: Re: Jersey Mike's v. AAA: Waiver of Service

Let us discuss with the clients.

Thank you.

Joshua B. Swigart

From: Seth M. Shapiro <sshapiro@zarcolaw.com>

Date: Thursday, June 29, 2023 at 3:51 AM

To: Noah Larsh <noah@swigartlawgroup.com>, Joshua Swigart <josh@swigartlawgroup.com>, Spencer Pfeiff <spencer@swigartlawgroup.com>, Daniel Shay <danielshay@sandiegobankruptcynow.com>

Cc: Robert Einhorn <REinhorn@zarcolaw.com>, Ingrid Morfi <IMorfi@zarcolaw.com>, Adin Feliz <afeliz@zarcolaw.com>, Michael DiCicco <mdicicco@maggslawnj.com>, Jane Campagnoli <jcampagnoli@maggslawnj.com>

Subject: Jersey Mike's v. AAA: Waiver of Service

Counsel:

As you are likely aware from being copied on our email to AAA earlier today, our client, Jersey Mike's Franchise Systems, Inc. ("Jersey Mike's"), has filed the attached complaint in the U.S. District Court for the District of New Jersey against your clients Ophelia Augustine and Cecelia Lahr ("Defendants") with respect to the arbitrations that they filed against Jersey Mike's. Jersey Mike's requests that Defendants waive service of the summons and accept service of the complaint via this email pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. If Defendants agree, please return to us via email executed copies of the attached forms for waiver of service within thirty days from today, i.e., by July 28, 2023. If Defendants fail to do so, we will seek to hold Defendants responsible for paying our expenses and fees as provided in Rule 4(d)(2).

Regards,
Seth

SETH M. SHAPIRO
Senior Attorney



ZARCO EINHORN SALKOWSKI, P.A.
One Biscayne Tower
2 S. Biscayne Blvd 34th Floor
Miami, FL 33131
Office: 305.374.5418 ext. 315
Fax: 305.374.5428
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EXHIBIT B

Nicole Rivera

INVOICE

Nicole Rivera

1012 Guatay Avenue
Chula Vista, CA 91911
619-227-4537
Nmccorp32@outlook.com

INVOICE # 112
DATE 8/9/2023

Zarco Einhorn Salkowski

2 S. Biscayne Blvd 34th Floor
Miami Florida 33131
305-374-5418

FOR service for process
P.O. # Lahr/Augustine

Description	Amount
RUSH Personal Serve – Cecelia Lahr – 7/14/2023	\$90.00
RUSH Personal Serve – Ophelia Augustine – 7/15/2023	\$90.00
Total	\$180.00

Make all checks payable to Nicole Rivera

Payment is due within 30 days.

If you have any questions concerning this invoice, contact Nicole Rivera | 619-227-4537 |
nmccorp32@outlook.com

THANK YOU FOR YOUR BUSINESS!

EXHIBIT C

Type	User	Client	Date	Activity category	Description	Hours	Rate (\$)	Total (per User)
TimeEntry	Seth Shapiro	Jersey Mike's	6/28/2023	Draft	Review FRCP 4 regarding waiver of service requirements; draft email to opposing counsel requesting waiver of service of process; prepare waiver forms; calendar deadline to return forms	0.75	\$600.00	\$450.00
TimeEntry	Seth Shapiro	Jersey Mike's	7/12/2023	E-Mail	Follow-up emails to opposing counsel requesting waiver of service of process	0.09	\$600.00	\$54.00
TimeEntry	Seth Shapiro	Jersey Mike's	8/16/2023	Revise	Fed dec action: review/revise motion to assess costs re service of process; review/compile time spent on service of process and requesting waiver	0.85	\$600.00	\$510.00
TimeEntry	Anite Coro	Jersey Mike's	8/9/2023	Prepare	Review Federal Rules of Civil Procedures on Waiver of Service of Process. Prepare Motion to Assess Costs for Failure to Waive Service of Process, gather documents needed to prepare Motion.	2	\$175.00	\$350.00
TimeEntry	Robert Einhorn	Jersey Mike's	8/18/2023	Review	Review motion papers	0.2	\$795.00	\$159.00
TimeEntry	Seth Shapiro	Jersey Mike's	9/14/2023	Draft	Draft declarations and update motion papers	0.45	\$600.00	\$270.00
					Total (All Users)	4.34	—	\$1,793.00